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| 10/607,730 | 06/27/2003 | Roger H. Bruning | UNVN 106165 | 6504 |
| 5251 7590 01/06/2009 SHOOK, HARDY & BACON LLP INTELLECTUAL PROPERTY DEPARTMENT 2555 GRAND BLVD KANSAS CITY, MO 64108-2613 | | | | |
| EXAMINER | | | | |
| MOSSER, ROBERT E | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3714 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/607,730

Applicant(s)

BRUNING ET AL.

Examiner

ROBERT MOSSER

Art Unit

3714

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/23/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **18-50** are rejected under 35 U.S.C. 103(a) as being unpatentable over by Bajer et al (US 6,736,642) herein after referenced as Bajer in view of Ho (US 6,160,987).

Claims **18-19**, and **41-42**: Bajer teaches a system for invocable by a student/learner teaching critical thinking skills to students (learner) in a computer environment (*Bajer* Abstract) including:

a content module operable to receive, store, and present informational content to a student (*Bajer* Col 3:63-4:15);

a query module operable to receive, store, and present question to a student and further operable to receive and student responses and justifications of said responses wherein the student responses and their respective justification are submitted concurrently(*Bajer* Figures 8A, 8B);

a coach module operable to provide said student with information and criteria related to the subject matter of each question to assist the student in forming their responses and respective justifications (*Bajer* Elm 614, Col 13:49-53) wherein said information is provided to the student prior to the learner providing their justification/validation (*Bajer* Col 11:7-16; 12:1-27 teaches the user about assumptions prior to requesting the user to formulate them);

an analysis module operable to analyze the student responses and respective justifications and present the results of the analysis to the student (*Bajer* Col 15:32-36; 16:18-27);

a reference module to store and provide reference material to the student prior to requiring a response from the student and containing information relevant to the field of the question (*Bajer* Elm 616, Col 13:63-14:4, Figure 6);

an expert module to receive and store and expert's in the field of the questions answers and justifications and in additionally provide said expert's answers and justifications to the student (*Bajer* Col 11:47-63); and

an interface operable to provide an connection between the student and said system (*Bajer* Figure 1).

In addition to the above Bajer teaches the multiple and simultaneous submission of student provided information types such as assumptions and validations as shown in figure 8b of Bajer. Despite this however, Bajer is arguably silent regarding teaching that these informational type simultaneously entered are an answer and a justification/assumption.

However as Bajer teaches the both the entry of the claimed information type or equivalents thereof, and the use of simultaneous entry of data, the claimed feature represent a combination of known elements as disclosed Bajer. Accordingly It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the answer/response data entry section with the assumption and validation window of Bajer in order to enable the student to alter their answer/response if they discover an error in their logic during their completion of the assumption and validation boxes, or alternatively answer the question portions in an order better suited to their particular learning style.

Bajer is silent regarding a learner interface that enables multiple learners or equivalently students to interact with one another regarding the questions however this feature is taught by the prior art reference of Ho (*Ho* Col 9:16-39, 9:52-10:6). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the teachings of Ho into the invention of Bajer in order to strengthen the user understanding of the subject matter as taught by Ho (*Ho* Col 9:16-39).

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Claims **20-21, 23, and 46**: Bajer teaches an interaction module including a record of the user's interaction further comprising a transcript generated by the students interaction , student responses, and justification, the interaction of a plurality of students and/or a expert to review the responses and provide feed-back to learner who generated the responses on said learner's progress (*Bajer* Col 16:24-34).

Claim **22, and 36**: The prior art of Bajer discusses the inclusion of group discussions between multiple learners utilizing client computers connected through a network (internet) as taught above however is silent regarding the use of email to facilitate communication between learners. It is Applicant admitted prior art that the use of email to allow communication between students/learners with access to a network linked computer is extremely old and well known in the art. Accordingly it would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated email communication between learners (students) in the system of Bajer in order to facilitate communication between learners through known computer communication mediums.

Claims **24-27**: Bajer teaches a collection of authoring tools and interface that allow the author to select a plurality of modules/objects operable to enable the author to select the information provided to the learner, features included and what information the author will receive concerning the learner's answers and justifications (*Bajer* Col 4:18-9:63).

Claim **28**: Bajer describes a module for storing content query, and expert information as programming objects (*Bajer* Col 5:42-47) capable of containing tables, files, and user defined data types.

Claims **29-30**: The prior art of Bajer is silent regarding further defining said analysis module as a spreadsheet application and wherein alternatively said analysis module is operable to perform statistical analysis. However, it is Applicant admitted prior art that using a spreadsheet application as an analysis module to perform a statistical analysis is old and well known in the art. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate a spreadsheet application as an analysis module into Kerwin/691's invention, in order to facilitate information analysis.

Claims **31, 38-39, and 44**: Bajer teaches providing informational content and a query as part of a first electronic page and a result as part of a second electronic page (*Bajer* Figures 4-5, Elm 890, Col 12:34-13:22).

Clam **32**: Bajer teaches the utilization of Hypertext Markup Language (html) instructions for the creation of modules (*Bajer* Col 8:42-9:64).

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Claims **33-35**, and **43**: Bajer teaches the software components as taught above in the rejection of at least claim 29 and further sets forth for the use of a computer connected to a network/internet (*Bajer* Figure 1) for allowing the transfer of the program aspects of the invention between a client and a company (equivalently understood as a server) (*Bajer* Col 8:42-49).

Claim **37**: Bajer teaches the recording of a transcript of the training session in addition to multiple computer readable code devices enabling the operation for the disclosed software training system including the transfer of informational content, questions, expert answers, and justifications (*Bajer* Figure 1, Col 3:61-4:15; 16:24-27).

Claim **40**: Bajer is silent regarding obtaining data related to site usage or site performance and transmitting said data to a second client computer. However, it is Applicant admitted prior art that obtaining such metrics are old and well known in the art. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate obtaining such metrics into the invention of Bajer, in order to assess site efficiency.

Claim **45**: Bajer teaches allowing a user to enter a response (justification) and a justification (validation) in a single electronic page (*Bajer* Figure 8b).

Claims **47-49**: Bajer teaches providing informational content to a student in the form of text, audio, and/or video (*Bajer* Patented claim 8).

Claim **50**: The prior art of Bajer discusses the entry of text assumptions and validations as taught above, however is arguably silent regarding allowing the use of numeric ratings. It is Applicant admitted prior art that the use of use of numeric ratings is extremely old and well known in the art for establishing confidence levels in student provided answers. Accordingly it would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated use of numeric ratings in the system of Bajer in order to allow the student to quantify their confidence in their assumptions.

Response to Arguments

The Applicant's remarks dated September 23rd, 2008 are primarily directed to the presentation of amendments, which have been addressed in the rejections as presented above.

On page 11 of the above dated remarks the applicant argues the proposed novelty of the claimed invention premised on the coach module being invocable by the learner however, in consideration of this argument the system of Bajer (notably including the coach module) is invocable by the learner since in the learner's act of invoking the system of Bajer as a whole they would also invoke the coach module.

Continuing onward the applicant argues proposed novelty based on the information that is supplied by the coach module is pertinent to the subject matter of the

question presented. However as cited above Bajer teaches the presentation of a coaching module both prior to the presentation of a question and after the learner provides a response wherein the information provided by the coaching module and the questions are commonly based on the identification of assumptions in a individuals thought process and ensuring that those assumptions are appropriate for a given circumstance.

On page 12 of the applicant remarks dated September 23rd, 2008 the applicant argues the claim language setting the expert as an expert in the field of the questions and distinct from the learner is not provided by Bajer. Instead the applicant argues that Bajer teaches a physiologist that would as proposed by the applicant not an expert in the field of the questions. In review of the above the questions of Bajer teaches the utilization of expert answers from a psychologist (an expert specialized in human behavior) not a physiologist (a biologist specializing in physiology) to assist in questions based upon properly discerning. Accordingly as the questions of Bajer are based on characterization and identification of human behavior and the expert is specialized in the same field, the expert is indeed specialized in the field of the question.

Continuing on page 12 the applicant argues features previously presented in cancelled claims 11-14 as not being provided for by Bajer. The previously cited prior art of Ho has been incorporated into the pending rejections to address these features as now incorporated into the pending claims.

Concluding on page 13 of the applicant remarks the applicant challenges the obvious modification of Bajer presented in the Non-final rejection of June 25th and

maintained herein based on facts inappropriate for official notice. This argument however is fundamentally flawed for no such reliance on Official Notice for the receiving of answers simultaneously is relied upon presently or in the previous action has been presented. Figure 8c of Bajer demonstrates the simultaneous submission of learner responses while the information submitted has been provided for as cited above. Accordingly both the format of submission and the information submitted by the learner have been provided for by the prior art of Bajer the while the arrangement of the particular data submitted in a simultaneous manner represents a mere rearrangement of elements known by Bajer. The preceding has been held as obvious under both MPEP 2144.04.VI.C & MPEP 2141.III.

For the reasons set above the rejection of claims is maintained under Bajer and Ho.

Official notice

Official notice stating that "using a spreadsheet application as an analysis module to perform a statistical analysis is old and well known in the art" was presented in the Office action of May 22nd, 2006.

Official notice stating that "obtaining data related to site usage or site performance and transmitting said data to a second client computer is old and well known in the art" was presented in the Office action of May 22nd, 2006.

Official notice stating that, "the use of email to allow communication between students/learners with access to a network linked computer is extremely old and well known in the art" was presented in the Office action of May 11th, 2007.

Official notice stating that, "the use of use of numeric ratings is extremely old and well known in the art for establishing confidence levels in student provided answers" was presented in the Office action of May 11th, 2007.

These statements were not objected by the Applicant in their subsequent replies entered October 10th, 2008 and January 28th, 2008 and are now therefore considered Applicant admitted prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT MOSSER whose telephone number is (571)272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571) 272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry. Suhol/
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